

Taxation and Revenue Department
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**REGULATION PERTAINING TO THE
COPPER AD VALOREM TAX ACT
SECTION 7-39-2 NMSA 1978**

[3.7.2 NMAC]

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STATE AND COUNTY TREASURERS MAY DISTRIBUTE FUNDS

7-39-1. Short title.-- Chapter 7, Article 39 NMSA 1978 may be cited as the "Copper Production Ad Valorem Tax Act".
(Laws 1990, Chapter 125, Section 8)

7-39-2.DEFINITIONS - As used in the Copper Production Ad Valorem Tax Act:

As used in the Copper Production Ad Valorem Tax Act [Chapter 7, Article 39 NMSA 1978]:

A. "average price" means for any mineral the average price for the appropriate period determined from published price data in the manner specified by regulation;

B. "copper mineral property" means all mineral property and property held in connection with mineral property when seventy-five percent or more, by either weight or value, of the salable mineral produced from or by the mineral property is copper;

C. "copper production ad valorem tax" means the tax imposed by the Copper Production Ad Valorem Tax Act;

D. "department" means, unless the context requires otherwise, the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

E. "new copper mineral property" means either a copper mineral property that began operations on a commercial basis within the three-year period immediately preceding the tax year for which value is being determined or a copper mineral property that was valued and taxed under the Property Tax Code [Articles 35 to 38 of Chapter 7 NMSA 1978] for any tax year subsequent to the 1990 property tax year within the three-year period immediately preceding the tax year for which value is being determined;

F. "produced" means the altered form, character or condition of a mineral that is the product of a particular process;

G. "taxable value" means the value of property determined by applying the tax ratio to the valuation of the copper mineral property determined for purposes of the Copper Production Ad Valorem Tax Act [Chapter 7, Article 39 NMSA 1978];

H. "tax ratio" means the percentage established under the Property Tax Code [Chapter 7, Articles 35 to 38 NMSA 1978] that is applied to the value of property determined for property taxation purposes to derive taxable value, as that term is defined in the Property Tax Code; and

I. "value of salable copper and other minerals" means:

(1) for new copper mineral properties, the sum, for copper and each other mineral produced, of the product of the salable amount of the mineral produced during the interval beginning with the month in which operations on a commercial basis began or recommenced and ending with the last month of production preceding the tax year for which valuation is being determined; multiplied by the normalization factor which is a fraction, the numerator of which is twelve and the denominator of which is the number of months within the interval beginning with the month in which operations on a

commercial basis began or recommenced and ending with the last month of production preceding the tax year for which valuation is being determined; further multiplied by the average price for the interval beginning with the month in which operations on a commercial basis began or recommenced and ending with the last month of production preceding the tax year for which valuation is being determined; and

(2) for all other copper mineral properties the sum, for copper and each other mineral produced, of the product of the quotient of the salable amount of the mineral produced during the three calendar years immediately preceding the year for which valuation is being determined divided by three; multiplied by the average price for the three-year period.

(Laws 1990, Chapter 125, Section 9)

3.7.2.8 - DETERMINATION OF AVERAGE PRICE

A. The copper and other mineral prices to be used to calculate the value of salable copper and other minerals for purposes of the Copper Ad Valorem Tax Act shall be the following average annual prices as published in *Metals Week*, or any successor publication, for each year:

- (1) Copper - "COMEX HG 1st position" copper price per pound cathodes;
- (2) Gold - "Handy and Harmon" gold price per troy ounce;
- (3) Silver - "Handy and Harmon" silver price per troy ounce;
- (4) Molybdenum sulfide concentrate - "Byproduct Concentrate" molybdenum price per pound;
- (5) Molybdic oxide - "*Metals Week* Dealer Oxide" molybdenum price per pound;
- (6) Zinc - "*Metals Week* U.S. high grade" zinc price per pound; and
- (7) Other minerals - as determined by the taxation and revenue department pursuant to subsequent regulation or in response to a written request from the taxpayer specifying the mineral produced and the taxable years to which the request pertains.

B. This section (3.7.2.8 NMAC) is applicable to taxable transactions on or after July 1, 1990.

[7-1-90, 7/31/96; 3.7.2.8 NMAC - Rn & A, 3 NMAC 7.2.8, 12/14/00]

7-39-3. Application of act.-- The provisions of the Copper Production Ad Valorem Tax Act [Chapter 7, Article 39 NMSA 1978] apply to the valuation of

**all productive copper mineral property.
(Laws 1990, Chapter 125, Section 10)**

7-39-4. Valuation of copper mineral property. --

A. The valuation for purposes of the Copper Production Ad Valorem Tax Act [Chapter 7, Article 39 NMSA 1978] of copper mineral property of the following types shall be determined annually, except as provided otherwise in

Subsection B, C or D of this section, as follows:

(1) the value of any mine and all real property and personal property held or used for the mining of ore from the mine:

(a) any part of which is mined for processing in a concentrator shall be thirty percent of the value of salable copper and other minerals contained in concentrate produced from the ore produced from the mine; or

(b) which is mined solely for solvent extraction or electrowinning shall be twenty percent of the value of salable copper and other minerals produced through solvent extraction or electrowinning from the ore produced from the mine;

(2) the value of a concentrator and all real property and personal property held or used in connection with the concentrator shall be twenty-five percent of the value of salable copper and other minerals contained in concentrate produced in the concentrator;

(3) the value of a precipitation plant and all real property and personal property held or used in connection with the precipitation plant shall be twenty-five percent of the value of salable copper and other minerals contained in precipitate produced in the precipitation plant;

(4) the value of the solvent extraction or electrowinning plant and all real property and personal property held or used in connection with the solvent extraction or electrowinning plant shall be one hundred thirty-five percent of the value of salable copper and other minerals produced through the solvent extraction or electrowinning process, less four times the value of property determined for the same tax year under Subparagraph (b) of Paragraph (1) of this subsection; and

(5) the value of a smelter and all real property and personal property held or used in connection with the smelter shall be twenty-one percent of the value of salable copper and other minerals produced in the smelter.

B. A property, which has been valued in accordance with the Copper Production Ad Valorem Tax Act [Chapter 7, Article 39 NMSA 1978] in any preceding year and which is permanently shut down on or before January 1 of any year for which a valuation is to be made under the Copper Production Ad Valorem Tax Act, is no longer subject to the Copper Production Ad Valorem Tax Act and is subject instead to the provisions of the Property Tax Code [Articles 35 to 38 of Chapter 7 NMSA 1978].

C. A copper mineral property from which no copper or other minerals were mined or processed during a period of at least twelve months immediately prior to the beginning of the tax year for which valuation is being determined is not subject to the Copper Production Ad Valorem Tax Act and is subject instead to the provisions of the Property Tax Code.

D. This subsection applies only to copper mineral properties with respect to which the owner, as part of the annual report to the department,

declares for the tax year for which valuation is being determined or has declared for any prior tax year that a copper mineral property will remain in operation for a period less than four years and will not be replaced or reconstructed:

(1) the valuation of a copper mineral property subject to this subsection shall be the value determined under Subsection A of this section for that property multiplied by:

(a) twenty-five percent for properties with an anticipated operating period of less than one year as of the beginning of the tax year for which valuation is being determined;

(b) forty-five percent for properties with an anticipated operating period of at least one year but less than two years as of the beginning of the tax year for which valuation is being determined;

(c) sixty percent for properties with an anticipated operating period of at least two years but less than three years as of the beginning of the tax year for which valuation is being determined; and

(d) seventy-five percent for properties with an anticipated operating period of at least three years but less than four years as of the beginning of the tax year for which valuation is being determined; and

(2) if the owner declared in a prior annual report that the copper mineral property would remain in operation for a period less than four years and the owner, in the annual report for the tax year for which valuation is being determined, does not declare that the property will remain in operation for a period less than four years, declares that permanent shutdown is not anticipated within four years or declares that permanent shutdown is anticipated in a year subsequent to the year declared in the prior tax year, there shall be added to the property's valuation determined under Subsection A of this section or Paragraph (1) of this subsection, as appropriate, one hundred percent of:

(a) if the owner fails to make a declaration or declares that the property will remain in operation for a period of at least four years, the difference between the valuation for the property determined solely under Subsection A of this section for each prior tax year in which the owner had declared the property would remain in operation for a period less than four years and the respective valuations in those prior tax years determined under this subsection; or

(b) if the year of anticipated permanent shutdown declared in the prior tax year annual report is earlier than that in the subsequent annual report, the difference between the valuation for the prior tax year determined under this subsection using the later date of anticipated permanent shutdown and the valuation for that prior tax year determined under this subsection in that prior tax year; and

(3) when value is added pursuant to Paragraph (2) of this subsection to the valuation otherwise determined for the copper mineral

property, the property owner shall pay interest at the rate determined under Section 7-1-67 NMSA 1978 on the additional taxes due and penalty at the rate determined under Subsection A of Section 7-1-69 NMSA 1978. The interest and penalty shall be measured from the dates that the taxes were due to have been paid for the tax year from which the additional valuation derived.
(Laws 1990, Chapter 125, Section 11)

7-39-5. Annual report of value.--Each tax year the owner of a copper mineral property shall report to the department on the forms and in the manner prescribed by the department the value, for purposes of the Copper Production Ad Valorem Tax Act [Chapter 7, Article 39 NMSA 1978], of each copper mineral property owned and the taxing jurisdictions in which each

property is located. The report shall also contain a declaration of the year in which the owner expects the copper mineral property to be permanently shut down if permanent shutdown is expected within four years. A declaration shall be made in each annual report subsequent to an annual report in which such a declaration is first made for the copper mineral property. The report shall be submitted on or before March 31 of the tax year for which value is being determined. The report required by this subsection may be referred to as the "annual report".

(Laws 1990, Chapter 125, Section 12)

7-39-6. Notification to department of finance and administration and counties.-

- By August 1 of each year, the department shall prepare and send to the department of finance and administration schedules of the taxable value and taxing jurisdictions of each copper mineral property. The taxable values shown on the schedules shall be used by the department of finance and administration in setting property tax rates. A copy of the schedule for the county shall be sent to the assessors of the respective counties in which copper mineral property is located, who shall accept the schedules as the assessment of copper mineral property required under the Copper Production Ad Valorem Tax Act [Chapter 7, Article 39 NMSA 1978].

(Laws 1990, Chapter 125, Section 13)

7-39-7. Determination of taxable values for taxing districts. --To determine for any purpose the total taxable value of property required to be taxed under the Copper Production Ad Valorem Tax Act [Chapter 7, Article 39 NMSA 1978] for any taxing jurisdiction for any year after 1990, the taxable value of copper mineral property for the taxing jurisdiction entered upon the schedules prepared under the Copper Production Ad Valorem Tax Act for the tax year preceding the determination shall be used.

(Laws 1990, Chapter 125, Section 14)

7-39-8. Ad valorem tax levied.--An ad valorem tax is levied upon the owner of each copper mineral property that is not subject to valuation and taxation under the provisions of the Property Tax Code [Articles 35 to 38 of Chapter 7 NMSA 1978]. The amount of the tax shall be equal to the product of the taxable value determined for each copper mineral property owned multiplied by the rate certified to the department by the department of finance and administration for nonresidential property under the provisions of Sections 7-37-7 and 7-37-7.1 NMSA 1978 for the taxing jurisdictions in which the copper mineral property is located.

(Laws 1990, Chapter 125, Section 15)

7-39-9. Notification of tax rate; due date.--

A. On or before November 1 of each tax year the department shall notify the owner or operator of each copper mineral property, to which the Copper Production Ad Valorem Tax Act [Chapter 7, Article 39 NMSA 1978] applies, of the tax rates that have been established for the taxing jurisdictions in which the copper mineral property is located, the taxable value of the copper mineral property and the amount of the copper production ad valorem tax due.

B. The copper production ad valorem tax is payable in two equal installments due on December 10 of the year for which tax is assessed and on May 10 of the following year. Payment shall be made to the department. No demand for payment of the copper production ad valorem tax is necessary.

(Laws 1990, Chapter 125, Section 16)

7-39-10. Monthly report to department of finance and administration; remittances to state and county treasurers; state and county treasurers may distribute funds.--

A. By the last day of each month, the department shall prepare and

certify a report to the secretary of finance and administration. The report shall be for the preceding month and shall show the amount of copper production ad valorem tax distributed to the copper production tax fund, the amount due the state and each taxing district imposing a tax and any other information required by the secretary of finance and administration. The secretary of finance and administration shall forthwith remit the appropriate amounts from the copper production tax fund to the state treasurer and the county treasurers who shall make the appropriate distribution, except as provided in Subsection B of this section.

B. If the board of county commissioners notifies the secretary of finance and administration that the county elects not to distribute the proceeds of the copper production ad valorem tax due to the municipalities and school districts in the county, the secretary of finance and administration shall pay amounts due directly to municipalities and school districts within the county.

(Laws 1990, Chapter 125, Section 17)
